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Hyer

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-208777

DATE: August 30, 1983

MATTER OF: Lingtec, Incorporated

DIGEST:

1. Protest is denied, despite deficiencies in the procurement, where deficiencies did not operate to deny protester an award to which it was otherwise entitled.
2. Agency use of the evaluation subcriterion, "other (specify)," was not objectionable where what the evaluators considered and specified on evaluation sheets was reasonably related to the announced major criterion.
3. Where evaluators assign weights to evaluation criteria differing from the weights which offerors presumably assumed (i.e., equal weight), the error of not informing offerors of the relative importance attached to each evaluation factor is not cured by merely assigning equal weights to the criteria and normalizing the evaluators scoring against the new weights.
4. Where offerors are entitled to assume that price has a weight equal to other evaluation factors, the evaluation of price, using a form of mathematical analysis in which prices closest to the Government estimate receive maximum points and deviations from the Government estimate are penalized by award of lesser point values, is improper.
5. Agency can award negotiated contract on the basis of initial proposals without discussions where there is adequate competition to insure that award is at a fair and reasonable price provided that the solicitation advises offerors of the possibility that award might be made without discussions.

026536

Lingtec, Incorporated (Lingtec), protests the award of a contract for a study of the "Probability of Hazardous Substance Spills on [the] St. Clair/Detroit River System" to Arctec, Incorporated (Arctec), under request for proposals (RFP) NO. DACW35-82-R-0044 issued by the United States Army Corps of Engineers, Detroit District (Army).

Lingtec protests that, in awarding the firm, fixed-price contract to Arctec (the fourth low offeror) on the basis of initial proposals and without discussions, the Army "is spending money it does not have to spend to obtain a product no better than the one * * * [Lingtec] offered." Lingtec (the low offeror) asserts that its prior experience with virtually identical studies renders it totally qualified to perform the work. Lingtec questions the technical scoring under which: (1) Arctec's proposal received the maximum possible score, (2) Lingtec's proposal, despite 16 years of experience, received only 20 of 50 possible points in the category of experience, and (3) one subcriterion became, in Lingtec's opinion, an overriding factor of the technical evaluation. Lingtec further questions the use of a "price weighting" formula in scoring of the cost proposals and the Army's failure to establish a competitive range and conduct negotiations.

We deny the protest despite deficiencies in the procurement because, in our view, the deficiencies did not operate to deny Lingtec an award to which it was otherwise entitled. Humanics Associates, B-193378, June 11, 1979, 79-1 CPD 408.

The RFP reserved to the Government the right to accept other than the lowest offer and the right to award a contract on the basis of initial proposals without discussion. The RFP listed four evaluation criteria: (1) knowledge and understanding, (2) experience, (3) capacity, and (4) price. The meaning of each criterion was briefly described, but the relative importance of each criterion was not disclosed.

Ten proposals were received. The Source Selection Committee (Committee) was provided with evaluation sheets listing the three major technical evaluation criteria and subcriteria and assigned points as follows:

- | | |
|--------------------------------|-----------|
| 1. Knowledge and Understanding | 40 points |
| 2. Experience | 50 points |
| 3. Capacity | 10 points |

After scoring each proposal, a narrative summary was prepared briefly describing each proposal. Arctec's proposal was described as:

"Arctec - 100 points, Adequately addressed all areas requested in the RFP. In addition, Arctec has demonstrated vast experience with similar studies (requiring similar techniques and capabilities) in the Great Lakes."

The offeror with the second highest technical score was described as "Reese Chambers - 87 points, failed to demonstrate experience in the project area (e.g., Great Lakes)." Finally, the protester's sixth highest technical proposal received this description:

"LTI [Lingtec] - 65 points, failed to adequately address data acquisition. Did not demonstrate experience in similar projects especially regarding the project site (e.g., Great Lakes)."

The contracting officer reviewed the Committee's evaluation sheets and accompanying narrative summary. He then prepared a final evaluation which applied a weighting scheme different than the Committee's weighting scheme. The new scheme altered the relative weight assigned to the three technical factors from 40, 50 and 10 points to 25, 25 and 25 points and added a weight for price of 25 points. The final scores, as adjusted by the contracting officer, were:

	<u>Arctec</u>	<u>Reese-Chambers</u>	<u>Lingtec</u>
Knowledge	25	21.25	18.75
Experience	25	21.50	10.00
Capacity	25	25.00	25.00
Price	<u>18</u>	<u>12.25</u>	<u>10.25</u>
<u>Total</u>	93	80	64

Technical Scoring

First, we point out that we neither conduct de novo reviews of technical proposals nor independent assessments of their respective merits because proposal evaluation is properly within the purview of the procuring agency. See E-Systems, Inc., B-191346, March 20, 1979, 79-1 CPD 192. Our function is limited to deciding whether the procuring agency's choice is legally objectionable. INTASA, B-191877, November 15, 1978, 78-2 CPD 347.

Where, as here, the RFP fails to indicate the relative importance of the evaluation criteria, we have held that offerors may properly assume that all have equal importance, Dikewood Services Company, 56 Comp. Gen. 188, 194 (1976), 77-2 CPD 520; New Jersey Association on Correction, B-199680, April 9, 1981, 81-1 CPD 272.

Lingtec contends that the fact that Arctec's proposal received the maximum possible technical score is evidence that Arctec, as a "de facto" incumbent because it had previously prepared a report on the area for the Army, was the Army's preselected favorite.

The Committee evaluation sheets show that Arctec received the maximum possible technical score from the Committee. Both the second high technical offeror (Reese-Chambers) and the protester lost points under two of the three major technical evaluation criteria--(1) knowledge and understanding, and (2) experience. In scoring the subcriteria under knowledge and understanding, Reese-Chambers and Lingtec both received 12 out of 12 points for their approach and 10 out of 12 for their evaluation procedures. Under the subcriterion, data acquisition, Reese-Chambers received the maximum 12 points, while Lingtec received 8 out of 12 points. Under the fourth subcriterion, "Other (specify)," Arctec received the maximum 4 points because it had "Performed numerous contracts in recent past directly related with proposal. Intimately familiar with project area." Neither Reese-Chambers nor Lingtec received any points under this subcriterion. We see no basis for objecting to the Army's use here of the unannounced subcriterion, "Other (specify)," since what the Committee actually specified on the evaluation sheets, in our view, was reasonably related to the major criterion of knowledge and understanding. Interactive Sciences Corporation, B-192807, February 23, 1979, 79-1 CPD 128.

The criterion of experience was divided into two subcriteria, firm experience and staff experience. Firm experience was further subdivided into: (1) similar contracts and (2) specialized contracts, while staff experience was further subdivided into: (1) similar projects and (2) "Participation in Great Lakes or connecting channel studies." The Committee gave Reese-Chambers and Lingtec the following scores out of the 50 points possible:

	<u>Reese-Chambers</u>	<u>Lingtec</u>
Firm Experience		
Similar contracts (30)	30	15
Specialized contracts (10)	5	0
Staff Experience		
Similar projects (8)	8	5
Great Lakes/connecting channel studies (2)	0	0

Lingtec questions the technical scoring with regard to Arctec's perfect score, the manner in which Lingtec's experience was evaluated, and the unwarranted emphasis accorded previous staff experience with either the Great Lakes or connecting channels. However, we find after reading both the Lingtec and the Arctec proposals that, in view of Arctec's considerable experience on the Great Lakes and Lingtec's failure to spell out any similar connecting channel experience, the Committee's scoring cannot be called unreasonable. Moreover, Arctec not only stressed its prior Great Lakes experience but also its ability because of its prior experience to begin work immediately, its possession of an acceptable mathematical model, and its ability to gather the required data in minimal time.

The record shows Arctec's strong competitive advantage, and there is nothing to indicate that its advantage resulted from any improper action by the Army in the conduct of the instant procurement. We have long recognized that firms may properly enjoy a competitive advantage as a result of their own incumbency, particular circumstances, and even a result of previous Government contracts, Houston Films, Inc., B-184402, December 22, 1975, 75-2 CPD 404; affirmed, Houston Films, Inc. (Reconsideration), B-184402, June 16, 1976, 76-1 CPD 380. Although Lingtec has urged that the Army was under an obligation to disclose Arctec's competitive advantage

(de facto incumbency) to other offerors so that they could avoid wasting both time and money on an unwinnable competition, we are unaware of any statute or regulation requiring such a disclosure. Overall, it appears that Lingtec's relatively low score under experience was merely the result of its lack of the kind of experience for which the evaluators were looking.

Likewise, notwithstanding the fact that the Committee, for its own purposes, elected to assign 2 of the possible 50 points to the subcriterion of the staff experience on the Great Lakes (or on connecting channel studies), we find no ground to object because the major criterion of experience, as explained in the RFP, required offerors to "demonstrate successful completion of similar projects."

One aspect of this evaluation is, however, open to criticism. We have long held that offerors should be informed by the solicitation of the relative importance attached to each evaluation factor. 51 Comp. Gen. 273, 279 (1971). We have already noted that, in the absence of such an indication of relative importance, offerors may assume that each factor is of equal importance. Here, the Committee disregarded this rule and assigned, in descending order, the following relative importance to the technical factors: Experience (50 points), Knowledge and Understanding (40 points) and Capacity (10 points). In reviewing the Committee's action, the contracting officer discovered the error and sought to cure it by: (1) assigning equal weight (25 points) to each of the three technical factors and the price factor, and (2) "normalizing" the Committee scoring against the new evaluation scheme. While we cannot question the contracting officer's authority to review the Committee's evaluation and change the relative importance of the evaluation factors, 51 Comp. Gen. 273, 281 (1971), the offerors should have been informed of the relative importance initially attached to the criteria by the Committee.

Notwithstanding the above, we cannot say that the protester was prejudiced since the Reese-Chambers offer was scored substantially higher than Lingtec's offer and would in all likelihood have been next in line for award after Arctec.

Price Weighting

Lingtec also protests the Army's use of the "price weighting" formula in the course of the evaluation. The "price weighting" formula used the Government estimate of \$47,000 to establish a standard against which each price would be compared and given a weighted score for evaluation purposes. The score was added to the weighted technical score in arriving at an offeror's total score. Lingtec alleges, and the Army admits, that the formula gave the greatest number of points to offers with prices closest to the Government estimate; and, in penalizing prices which deviated from the Government estimate, it penalized lower prices more than it penalized higher prices. The Army has previously disavowed the use of this method of price evaluation, M.L. Mackay & Associates, Inc., B-208827, June 1, 1983, 83-1 CPD 587, and has again indicated that it will not be used in the future. We agree that the use of such a method is highly questionable. See Design Concepts, Inc., B-184658, January 23, 1976, 76-1 CPD 39. However, because the Reese-Chambers offer, having a significantly higher technical score and only a slightly higher price, stands between Lingtec and the awardee, we cannot find that Lingtec was prejudiced by the use of this evaluation methodology.

Competitive Range/Negotiations

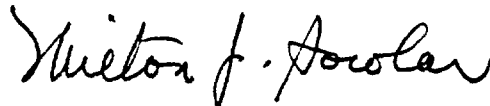
Lingtec contends that it was improper to make an award on the basis of initial proposal without discussions because Lingtec's offer was within the competitive range technically and offered a substantially lower (\$13,793.99 lower) price than Arctec's.

In negotiated procurements, discussions are generally required with offerors within the competitive range except in certain specific situations. For example, an award may be made without discussions if there is adequate competition to ensure a fair and reasonable price and the solicitation advises offerors of the possibility that an award might be made without discussions. Centurion Films, Inc., B-205570, March 25, 1982, 82-1 CPD 285; Defense Acquisition Regulation § 3-805.1(a)(v) (1976 ed.).

The solicitation warned offerors of the possibility of an award on the basis of initial proposals without discussion. Ten proposals were received. Of the 10, Arctec was evaluated as technically perfect, and it offered a price

\$13,043 below the Government estimate. Moreover, Arctec had just completed performance of an almost identical project. We cannot object in these circumstances to the contracting officer's decision to award on the basis of initial proposals without discussions. See Shapell Government Housing, Inc. and Goldrich and Kest, Inc., 55 comp. Gen 839 (1976), 76-1 CPD 161.

Accordingly, the protest is denied.

for 
Comptroller General
of the United States